IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

Bail Appl..No. 6846 of 2007()

CRIME NO. 728/07 OF CHENGAMANAD POLICE STATION

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PETITIONER/IST ACCUSED

SAJI PADMANABHAN, AGED 30 YEARS,
THEVALLI HOUSE, PUTHUVASSERY, CHENGAMANAD.

BY ADV. SRI.E.C.POULOSE

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTING SUB
INSPECTOR OF POLICE, CHENGAMANAD POLICE
STATION, THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 14/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 6846 of 2007

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Dated this the 14th day of November, 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations in a crime registered, inter alia, under Sections 406 and 420 r/w. 34 I.P.C. Initially two persons were shown as accused, i.e. the petitioner and his wife. It is submitted that the petitioner's wife has been deleted from the array of accused. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The crux of the allegations against the petitioner is that he received a total amount of Rs.5,70,000/- from the defacto complainant and others similarly placed (at the rate of Rs.30,000/- per person) on the promise that VISA for employment abroad shall be made available to them. VISA was not furnished. Amounts were not returned. The defacto complainant and others then came to understand that it was nothing but a clever ploy to fraudulently deceive the job seekers. The complaint was accordingly registered.

3. The learned counsel for the petitioner submits that inherently and on broad probabilities the allegations cannot inspire confidence. The defacto complainant has not alleged in the F.I. statement that his passport or documents relating to the qualifications were handed over to the petitioner. This shows the falsity of the allegation. At worst, it is only breach of a civil liability and no contumacious intention can be inferred from the circumstances. Anticipatory bail may, in these circumstances, be granted to the petitioner, prays the learned counsel.

4. The learned Prosecutor opposes the application. He submits that the documents seized clearly show that an amount of Rs.5,70,000/- was received by the petitioner on the promise to make VISA available for the job seekers. His subsequent conduct convincingly reveals that the promise was fraudulent and it were made only to induce the job seekers to part with money.

5. At my request, the case diary has been placed before me for my perusal. Having perused the same, I find merit in the opposition by the learned Prosecutor. I am unable to find any features in this case, which would justify the invocation of the extra ordinary equitable

discretion under section 438 Cr.P.C. in favour of the petitioner. This I am satisfied is a fit case where the petitioner must co-operate with the Investigator and he must appear before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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